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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-205951; B-205951.2 DATE: April 29, 1982

MATTER OF: Republic Steel Corporation; Penco Products, Inc.

DIGEST:

1. Statutory language expressing congressional intent that small business receive a "fair proportion" of Government contracts refers to total contracts for all goods and services. Thus, agencies properly may set aside a significant proportion of Government contracts for a particular category of items, or even make a class set-aside of all contracts for particular items.
2. In deciding to make a total small business set-aside, a contracting officer need only have a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible concerns so that awards will be made at reasonable prices.
3. When record indicates that five small businesses have commented on protest; that same number made offers for item most in demand on Federal Supply Schedule; and that with one exception, there were at least two offers for each type and size of item on schedule, GAO will deny protest that set-aside unduly restricts competition.
4. When protested total small business set-aside is found proper, a large business is not an interested party for raising other allegations with regard to the procurement.

* This is a protest by two large businesses, Republic Steel Corporation and Penco Products, Inc., against a 100 percent small business set-aside by the General Services Administration. The agency is making multiple awards under the set-aside of Federal Supply Schedule (FSS) contracts for clothing lockers. Because the grounds of protest are the same, we have consolidated the cases for decision; we deny both protests.

Republic and Penco were incumbent contractors under FSS Group 71, Part 3, Section K, which covers miscellaneous, special purpose furniture. They allege that the set-aside, effected by amendment to solicitation FNMS-S-3132N on December 16, 1981, unduly restricts competition to one or two small businesses. They further allege that the set-aside prevents the Government from getting the lowest possible prices and limits the selection to a relatively few types and sizes of lockers. Republic, for example, argues that "hundreds of Government customers will be denied the opportunity to purchase the exceptional design and quality offered by * * * [Republic's] Mondrian and Designer Series lockers."

Republic also argues that it should have been consulted before the decision to set aside this section of the Federal Supply Schedule for small business; that decision was the result of a November 1981 agreement between GSA and the Small Business Administration. In addition, the protesters have made various allegations concerning the capability, production capacity, and financial stability of one or more of the small business offerors.

As we frequently have pointed out, the Small Business Act, 15 U.S.C. § 631 (1976), expresses the intent of the Congress that small business should receive a "fair proportion" of total Government contracts for all goods and services. Thus, agencies properly may set aside a significant proportion of Government contracts for a particular category of items, or even make a class set-aside of all contracts for particular items. Fermont Division, Dynamics Corporation of America; Onan Corporation, 59 Comp. Gen. 534, 542, (1980), 80-1 CPD 438; Fermont Division, Dynamics Corporation of America, B-199159, July 15, 1981, 81-2 CPD 34.

In deciding to make a total set-aside, a contracting officer need only have a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible concerns so that awards will be made at reasonable prices. Federal Procurement Regulations § 1-1.706(5)(a) (amend. 192, June 1978). The record in this case clearly establishes that the contracting officer had such an expectation. During development of the protest, five different small businesses submitted comments to our Office expressing interest in the procurement. At a bid protest conference at our Office, GSA refused to reveal the exact number or identity of offerors, since awards had not yet been made. It did, however, submit documents to us which showed that with one exception (coin-operated lockers), there were at least two offerors for

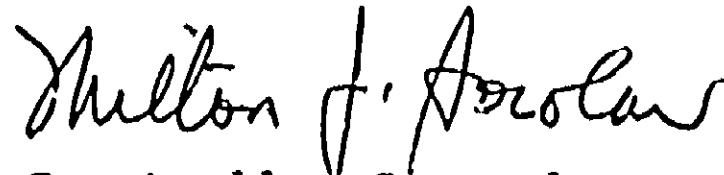
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each type and size of locker which GSA expected to place on the schedule. While "Designer" and "Mondrian" are Republic's terms for their top-of-the-line lockers, other firms offered similar products. GSA states that there were five offerors for single-tier or corridor lockers, the type most in demand.

Thus, there obviously was competition for the set-aside contracts, and there is no evidence that schedule prices and discounts offered by the small businesses are unreasonable.

Under these circumstances, we cannot find that the set-aside was improper. Therefore, neither Republic nor Penco, as a large business, is an interested party for raising other allegations with regard to the procurement. Fermont Division, Dynamics Corporation of America, supra.

The protests are denied with regard to the propriety of the set-aside and are otherwise dismissed.


Comptroller General
of the United States